



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 24, 2008

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:

LAWRENCE BEYER,

DEBTOR.

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CHAPTER 13

CASE NO.: 07-45172-DML-13

MEMORANDUM ORDER

Before the court is debtor Lawrence Beyer's ("Debtor") *Motion to Reconsider Order on Motion to Avoid Judgment Lien Pursuant to Section 522(f)(1)(A)* (the "Motion to Reconsider") filed at docket no. 42. In response to the Motion to Reconsider, Kelly Wilson ("Respondent") timely filed her *Response of Kelly Wilson in Response to Debtor's Motion to Reconsider Opinion and Order of July 15, 2008* at docket no. 45. On September 11, 2008 the court held a hearing on the Motion to Reconsider (the "Hearing"). At the Hearing the court heard argument from counsel for both Debtor and Respondent. By the Motion to Reconsider, Debtor seeks

reconsideration of the court's Memorandum Opinion disposing of the Motion to Avoid¹ entered July 16, 2008 (the "Memorandum Opinion") at docket no. 41.²

This matter is subject to the court's core jurisdiction. *See* 28 U.S.C §§ 1334 and 157.

This memorandum order embodies the court's findings of fact and conclusions of law. *See* FED. R. BANKR. P. 9014 and 7052. The court finds that notice of the Hearing was proper.

By the Motion to Avoid, Debtor sought to eliminate a lien imposed on certain real property (the "Property") by reason of a divorce decree entered in divorce proceedings between Debtor and Respondent. Debtor contends that the Property was his separate property and, hence, the court's reasoning, which depended upon the Property being community property, is flawed.

However, Debtor listed the Property as "community property" on his schedule "A"³ filed with the court.⁴ For this reason and because, under Texas law, there is a presumption that the property held in a marriage is community property (*see* Tex. Fam. Code § 3.003), the court stated in the Memorandum Opinion that the Property was, in fact, community property. Debtor now asks by the Motion to Reconsider that the court consider the last will and testament of Debtor's mother (the "Will"), by which the Debtor claims to have received title to the Property.

In order for Debtor to obtain reconsideration of the Memorandum Opinion, the requirements of FED. R. BANKR. P. 9023, adopting FED. R. CIV. P. 59(e), must be met. Rule

¹ The term "Motion to Avoid" refers to the *Motion to Avoid Judgment Lien Pursuant to Section 522(f)(1)(A)* at docket no. 31.

² The Motion to Reconsider was filed on July 24, 2008, eight (8) days after entry of the Memorandum Opinion.

³ A debtor signs the schedules thereby affirming their accuracy subject to the penalties provided for in 18 U.S.C. §§ 152 & 3517. The statements in bankruptcy schedules act as rebuttable admissions by the debtor of the facts asserted. Subject to limited qualifications, these admissions may be considered as evidence in a bankruptcy case. *See generally* 4 COLLIER ON BANKRUPTCY ¶521.08 (15th. ed. rev. 2004).

⁴ The court recognizes that the marriage, and thus, the community between Debtor and Respondent, was dissolved prior to the time of the commencement of Debtor's bankruptcy case. Nevertheless, nothing before the court suggests that the references by the Debtor on his Schedule "A" to the community ownership of the Property refers to a relationship other than that between Debtor and Respondent.

59(e) serves the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence. *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir.2004) citing *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir.1989) (internal citation omitted). While this court has considerable discretion in deciding a motion for reconsideration, such discretion is not limitless. *In re Berg*, 383 B.R. 631, 640 (Bankr. W.D. Tex. 2008). In any event reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly. *Templet* at 479.

Clearly, Debtor was well aware of the Will before the hearing on the Motion to Avoid. Therefore, in this case, the court concludes that the Will is not “newly discovered evidence” as the term is used in connection with Rule 59(e). Likewise, based on the evidence before the court, the court’s finding in the Memorandum Opinion that the Property was community property was not manifestly in error.

In the case at bar the court thus concludes that Debtor has not met his burden to show that the court should reconsider its Memorandum Opinion. The court further concludes that its prior conclusion that the Property is community property was properly based on the Debtor’s Schedule “A”.⁵ The Motion to Reconsider must therefore be **DENIED**.

It is so ORDERED.

END OF ORDER

⁵ The court may review the entire record when rendering a decision in a case. See *In re Mirant Corp.*, 354 B.R. 113, 120 (Bankr. N.D. Tex. 2006). Thus, although no party directed the court to Debtor’s schedules, Debtor’s Schedule “A” may be properly looked to by the court.